IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVET FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case
Criminal Jail Appeal No. 709 of 2001 Decided on: May 16, 2006

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date. 16.05.2006

(Initial of Judges)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judges for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Jail Appeal No. 709 of 2001
(Old No. 2854 of 1999)

Om Prakash ….. Appellant

Versus

State ….. Respondent

Mr. S.P.S. Panwar, Amicus Curiae for the appellant.
Mr. D.K. Sharma, Government Advocate for the respondent.

JUDGMENT
Coram: Hon. Rajeev Gupta, C.J.
Hon. Prafulla C. Pant, J.

Dated: May 16th , 2006

PRAFULLA C. PANT, J.

This is a Jail Appeal directed against judgment and order dated 17.09.1996 passed in Special Criminal Trial No. 11 of 1996 by learned Second Additional Sessions Judge, Haridwar, whereby appellant Om Praks is convicted under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to 20 years' rigorous imprisonment and also to fine of Rs. 2, 00,000/- (Rupees Two Lakhs only), in default of payment of which, he is directed to undergo further three years' rigorous imprisonment.

2. Prosecution story, in brief, is that on 20.101995 at about 6:10 p.m., the Station Officer Ram Chet Singh (PW1) of Police Station GRP Laksar, along with Sub-Inspector madan Pal Singh and other members of the force, was patrolling the Railway Station of Laksar. At about 7:30 p.m. when they reached near a bench, the appellant, who was sitting in the said bench, started moving from there. On getting suspicious about his activities, the police party chased and intercepted him. They enquired his name and address. Appellant.

disclosed his name as Om Prakash, S/o Sumer Chand, R/o Salia Jung Bahadur, P.S. Pasgawa, District Lakhimpur Khiri. On being taken search of his person, the police party found that the appellant was in possession of 10 tablets of Oxazepam, a packet of tablets of USP Serepax 30, a powder of rose colour rapped in a white paper and two packets of Bakeman's Cream Crunch Biscuits. In one of the Biscuits' packet word "Orange" was mentioned and in another "Butter". On being interrogated about the aforesaid articles, the appellant told the police party that he uses the tablets and the powder by mixing the same with tea and biscuits and administers to the passengers, and on their getting unconscious, robs them of their belongings. He further told the police men that in the packets of the biscuits, leaving first and last biscuits, the other biscuits contained powder of the tablets. The appellant also disclosed, on further queries, that the passengers, who do not take tea or biscuit, are given other eatable items after mixing the powder and the tablets. The police party, at the time of his search also gave him opportunity, if he wants that the search be taken before some gazetted officer, but the appellant told them that since he had already been caught, as such, he did not express desire of being searched before any Gazetted Officer and say anything except that he be forgiven. The police party took into their possession the aforesaid recovered articles from the appellant and prepared Recovery Memo (Ex. Ka 1), which was signed by not only PW1 Ram Chet Singh, but also by the other members of the police party namely Madan Pal Singh, Sub-Inspector; Constable Mahesh Giri and Constable Shiv Singh. A copy of the Recovery Memo was given to the accused appellant and on receiving the same he made his signatures at the end of the Recovery Memo. The police party took the accused appellant along with recovered articles to the Police Station and got registered Crime No. 109 of 1995 under Section 8/21/22 of the Narcotic Drugs and Psychotropic Substances

Act, 1985 against him. An entry No. 36 in the General Diary was also recorded at 9:15 p.m. regarding the same and the accused appellant was kept in the lock-up and the recovered articles were deposited in the *Maal Khana.*

3. PW3 T.R. Bhari, Chawi In-Charge of Police Station GRP Laksar was given the investigation and after his transfer, Sub-Inspector Raj Pal Singh (PW4) concluded the investigation. The Investigating Officer got sent through the Court the recovered articles for chemical examination to the Forensic Laboratory, Agra, from where a reprot (Ex. Ka. 6) was received. According to the said report, it was found that Articles Nos. 1 to 3 were found containing Oxazepam. Article No. 4(Biscuit) was found not containing any psychotropic substance. After completing the investigation, the investigating Officer submitted charge sheet (Ex. Ka 5) before the Court. After giving necessary copies to the accused and hearing the parties on the charge, the learned Second Additional Sessions Judge, Haridwar, framed charge relating to offence punishable under Section 8/21/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 against the accused appellant Om Prakash to which eh pleaded not guilty and claimed to be tried.

4. On behalf of the prosecution, PW1 Ram Chet Singh, Station Officer; PW2 Constable Rajveer Singh; PW3 Sub-Inspector T.R. Bharti and PW4 sub-Inspector Raj Pal Singh weere examined. Prosecution evidence was put to the accused appellant under Section 313 of the Code of Criminal Procedure, 1973. The accused appellant was also given opportunity to adduce the evidence in defence. After hearing the prosecution and the defence, learned Trial Court convicted accused Omk Prakash unbder Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced him to 20 years' rigorous imprisonment and also to fine

of Rs. 2,00,000/- (Rupees Two Lakhs only). IN default of payment of fine, it was directed that the accused shall undergo further three yearts' rigorous imprisonment. Aggrieved by the same the convict has preferred this appeal from Jail, where he is serving out the sentence.

5. Mr. S.P.S. Panwar, Senior Advocate was appointed as Amicus Curiae to assist the Court on behalf of the appellant. We heard learned Amicus Curiae and also the learned Government Advocate and perused the record.

6. PW1 Ram Chet Singh, Station Officer, GRP Laksar stated on oath before the Trial Court that on 22.10.1995 since 6:10 p.m. he, along with Sub-Inspector Madan Pal Singh, Constable Mahesh Giri and Constable Shiv Singh, was patrolling the Platform No. 1 of Laksar Railway Station. He further states that report as to the patrolling was made at Serial No. 31 in the General Diary. While patrolling, when they reached near a bench, they saw a person sitting there who, on being noticed by the police, started moving from there. On this, the police party became suspicious about his activities and chased him. At about 7:30 p.m., they caught him and enquired about his name and address. PW1 Ram Chet Singh, Station Officer further states that the person caught disclosed his name as Om Prakash, S/o Sumer Chand, R/o Salia Jung Bahadur, P.S. Pasgawa, District Lakhimpur Khiri. This witness has made it clear that the police party made efforts to take the public witnesses before taking search of the accused, but the passengers told that they had to undertake the journey, as such, they did not agree to be the witness of the search. On this, the police party took the search of the accused and found that the accused was in possession of 10 tablets of Oxazepam, one packet of tablets of USP Serepax 30, some powder rapped in a paper and two packets of the Biscuits of

make ‘Bakeman’s Cream Crunch’, in one of which word “Orange” was mentioned and in another the word “Butter”. PW1 Ram Chet Singh further states that on interrogation, accused Om Prakash told them that he uses these Biscuits and tablets to feed the passengers and after they get unconscious, he commits theft of the belongings of the passengers. The witness further stated that the articles were seized and Recovery Memo (Ex. Ka 1) was prepared at the spot. This eye-witness also proved the recovered articles tablets of Oxazepam (Ex. 2), Bakeman’s Cream Crunch Biscuits (Ex. 3/1, 3/2 and 3/3, it’s rapper (Ex. ¾), rosy powder (Ex. 4), paper on which it was rapped (Ex. 4/1). Other Biscuits were also marked on his evidence as Ex. 5/1 to 5/8 and the broken Biscuits were marked as Ex. 66/6. Their rapper was marked as Ex. 7.

7. PW2 Constable Rajveer Singh has proved the First Information Report (Ex. Ka 2) lodged at 21:15 hours on 20.10.1995. This witness also stated that he made necessary entry after registering the crime at Serial No. 36 in the general Diary on the same day, which is Ex. ka. 3 on the record. As such, the statement of this witness corroborates what has been stated by PW1 Ram Chet Singh that after the accused was apprehended with the aforesaid articles, he was taken to the Police Station and First Information Report was lodged against him. PW3 Sub-Inspector T.R. Bharti is the fist Investigating Officer, who prepared the site plan (Ex. Ka 4) and got sent through the Court the recovered articles for chemical examination.

8. Chemical Examiuner’s report (Ex. Ka.6) shows that item No. 1 the tablets of Oxazepam, item No. 2 Powder recovered, item No. 3 Bakeman’s Cream Crunch Biscuits and item No. 4 the closed packet of Biscuits of Bakeman’s Cream Crunch were sent to the Forensic Laboratory by the Additional District and Sessions Judge,

Haridwar, which were chemically examined and it was found that item nos. 1 to 3 contained Oxazepam, while on item No. 4, no psychotropic substance was found.

9. PW4 Sub-Inspector Raj Pal Singh, who concluded the investigation, has stated that after concluding the investigation, he submitted the charge sheet (Ex. Ka 5) against accused Om Prakash.

10. All the aforesaid documentary and oral evidence, read with the report of the Chemicla Examiner, proves the charge of offence punishable under Section 22 read with Section 8 of the Narcotic Drugs and Psychotropic substances Act, 1985 framed against the accused appellant Om Prakash.

11. Mr. S.P.S. Panwar, learend Amicus Curiae appointed by this Court to assist the Court, on behalf of the appellant argued that the arrest of the appellant was made by the police in violation of provisios of Section 41 and Section 102(2) of Code of Criminal Procedure, 1973. In this connection, he argued that there was no report with the police when the arrest was made. In our opinion the argument appears to be misconceived, as Clause (a) of sub-Section (1) of Section 41 not only permits the Police Officer to arrest a persons against whom complaint has been made, but also a person against whom reasonable suspicion exists. It is also argued by learned Amicus Curiae that no report of seizure was made to the Officer In-charge of the Police Station. This again, in our opinion, is a misconceived contention for the reason that PW1 Ram Chet Singh, being Station Officer, was himself Officer In-charge of the Police Station, It is also pertinent to mention here that in view to the principle of law in **Bharat Bhai Bhagwanji Bhai Vs. State of Gujarat reported in 2003 SCC (Cri) 4,** it has been held that where the police officer had to conduct search without having earlier

information about the contraband item, non-compliance of provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 does not vitiate the trial.

12. It is also contended on behalf of the appellant that no independent witnesses were taken by the police party in an open place like Railway Station and as such, the prosecution story should not have been believed by the Trial Court. Had there been no explanation for not taking the public witnesses, we would have agreed with the submission of the learned Amicus Curiae. But, in the present case, there is explanation given by PW1 Station Officer Ram Chet Singh that the police party made a request to the passengers to be witness of the siezure, but as they had to leave for their journey, they did not agree for the same. This, in our opinion, is valid explanation. In this connection, it is also argued by Mr. S.P.S. Pnawar, learned Amicus Curiae that the police party should have taken assistance of the vendors in the Railway Station. On this point, PW1 Station Officer Ram Chet Singh, in h is cross-examination, has stated that at the place where the arrest was made, there was no vendor standing in the nearby place.

13. Next submission made on behalf of the appellant is this that prosecution has not prodeuced all the witnesses to remove the doubt as to the tampering of the items said to have been recovered from the accused. The Recovery Memo (Ex. Ka 1) shows that the items were sealed after the same were recovered from the accused. It has come in the evidence that the items recovered and seized were deposited in the maal Khana and thereafter, items were sent to the Chemical Examiner for examination. The convict has not taken any plea before the Trial Court that the items were tampered with nor any suggestion to that effect was given to the witnesses examined. The case law referred on behalf of the appellant i.e. **State of**

Rajasthan Vs. Gurmail Singh reported in **2005(2) CCSC 686** does not help the appellant in this case for the reason that in the said case, there was no evidence that the sample sealed was compared with the bottle sent for examination. In this case, in Ex. Ka 6 the Chemical Examiner has mentioned *"Mudra Namune Anusar"*, Which means the sample seal tally with the seal marked on the articles.

14. Lastly, it is argued by the learned Amicus Curiae that the appellant has been sentenced too harshly. Had it been a case of mere possession of contraband, we would have thought it proper to reduce the sentence to some extent. But since it has come on record that the appellant was in possession of the contraband for the purposes of looting the passengers after making them unconscious by deceiving them, as such, we ar of the view that it is not a fit case, where the Court should show any leniency on the point of senjtence.

15. Therefore, in our opinion for the reasons as discussed above, the appeal is liable to be dismissed. The same is dismissed.

(Prafulla C. Pant, J.) (Rajeev Gupta, C.J.)

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